MULTIMEDIA UNIVERSITY

STUDENT ID NO

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# MULTIMEDIA UNIVERSITY

# FINAL EXAMINATION

**TRIMESTER 2, 2019/2020**

## UDL3622 – LAND LAW II

(All Sections / Groups)

09 MARCH 2020
Reading Time : 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

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**INSTRUCTIONS TO STUDENT**

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE (3) HOURS** in which to answer the questions.

2. This Question paper consists of 6 pages with 5 Questions only.

3. This Question paper consists of 2 sections. Attempt **ONE (1)** question only in **Section A** and all **THREE (3)** questions in **Section B**. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL COPY of:
   (i) National Land Code 1965 (Act 56 of 1965).

   "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

**SECTION A (Answer ONE (1) question only)**

## QUESTION 1

Suka Bina Riang Development Berhad, a well-known Developer in Melaka has submitted a proposed sub-division plan for few pieces of land held under Lot 378, 379 and 380 respectively, in Mukim of Pegoh, District of Ayer Keroh, Melaka and the plan was approved by the Melaka Tengah Land Office subsequently. The approval was for the erection of a row of twenty units of single storey terrace houses. The lot numbers given by the Chief Surveyor run from 3801 to 3820 in serial order. A title for each lot was subsequently issued corresponding to the lot numbers stated above, also numbered serially, from 1151 to 1170. Subsequent to the approved plan being passed, Suka Bina Riang Development Berhad prepared a site plan of the houses for sale to the public but numbered them wrongly by giving the plot numbers 1 to 20 from right to left instead of from left to right according to the numbers of the sub-divided plots.

As a result, lot No. 1 which according to the site became lot No. 20 instead of lot No. 1 and so on. Because of the error, the purchaser buying one of the houses, e.g. lot No. 1 shown on the site plan, was given a wrong title number and lot number. Similarly, in the case of the other purchasers. All these purchasers occupied the correct houses which they intended to purchase but they have been given the wrong titles which have not been registered on their names. In these circumstances, they have not acquired ownership of the correct houses due to having been registered on the wrong title.

Originally the titles were registered in the name of Suka Bina Riang Development Berhad. The purchasers received loans to purchase the houses from the Sooka Ugly Development Berhad, a subsidiary company of Suka Bina Riang Development Berhad, who have charged their lands to them. The grants were then submitted to the Registrar of Titles of Melaka, for registration together with the forms of transfer (Form 14A) which were filled *inter alia* with the titles and lot numbers in the wrong names of the respective buyers. Neither Suka Bina Riang Development Berhad nor the registrar were aware of the mistakes at the time the respective grants were issued. It is apparent that the mistakes lie with Suka Bina Riang Development Berhad who drew up smaller replicas of the approved sub-division plans annexing them to the agreement of sale to prospective buyers in the wrong order numbering the plots 1 to 20 from right to left instead of from left to right as provided by the approved sub-division plan.

The request by Suka Bina Riang Development Berhad for the correction of the mistakes appearing in the documents of title under section 380 of the National Land Code was turned down by the registrar.

**Continued...**

Advise Suka Bina Riang Development Berhad whether the refusal of the registrar to correct the mistakes is appropriate. Discuss also the general authority of the Court under section 417 in overcoming such mistakes. Your answers should be supported with the relevant provisions from the National Land Code and decided cases, if any.

**(Total : 25 marks)**

**Continued...**

**OR**

## QUESTION 2

Mr. Him entered into a Sale and Purchase Agreement with Mr. Hau to sell a double storey house located at Bukit Katil, Melaka ("the said property"). Mr. Hau paid the full purchase price of RM450,000 to Mr. Him's solicitors, namely Messrs. Hoh & Rakan-rakan ("the firm") as stakeholder by way of cash. The firm deposited the said purchase price into the client's account of the firm which maintains with Bank HIMB Berhad. Ms. Hwee, the account assistant of the firm released the full purchase price to Mr. Him subsequently but she kept the interest earned from placing the said purchase price without releasing the same to Mr. Him.

Meanwhile, Mr. Him has executed the Memorandum of Transfer (MOT) in favour of Mr. Hau. However, the Memorandum of Transfer in favour of Mr. Hau has yet to be presented for registration at the relevant land office. Mr. Hau is now arguing that Mr. Him is to hold the said property as trustee for him.

(a) Explain the doctrine of "bare trust" and meaning of solicitor stakeholder by referring to decided cases and relevant provisions under the National Land Code 1965.

(10 marks)

(b) What is the position in Malaysia regarding bare trust and stakeholder? Discuss the role and responsibilities of a stakeholder and the consequences of breach of duties as a stakeholder in the Torrens system of conveyancing.

(15 marks)

**(Total: 25 marks)**

**Continued...**

**SECTION B (Answer ALL THREE (3) questions)**

**QUESTION 3**

Sawi was the registered proprietor of a piece of land held under Grant 12, Lot 56, Mukim Ixora Kencana, Melaka ("the said land"). He entered into a sale and purchase agreement with Kobis for the sale of the said land for a total consideration of RM300,000. The agreement was prepared by Bayam, an advocate & solicitor from Messrs Bayam & Co ("the legal firm"). Upon signing the Sale and Purchase Agreement and a few other documents on 1 February 2019, Sawi received RM30,000 being the payment of the deposit. The balance to be paid within twelve (12) months from the date of the sale agreement. He deposited the title with the legal firm for the preparation of the instrument of transfer.

Without Sawi's knowledge, on 5 March 2019, the said land was then be charged to a financial institution as a security as security for a loan. The loan amount would be far in excess of the purchase price of the said land. In the present case, the purchase price of the said land was only RM500,000 but the said land was subsequently charged to Bank Kang Kung as security for loan facility of RM1.2 million to Saderi. The charge was prepared and registered by Bayam & Co upon instruction from Bank Kang Kung.

By June 2019, Saderi was unable to make ends meet and was unable to pay his instalment to Bank Kang Kung. As the loan fell into non-performing loan category, Bank Kang Kung transferred the charge to Bank Bonces in October 2019.

Bank Bonces has applied to the High Court for an Order for Sale after Saderi was unable to comply with the notice of default. The order was granted in mid-November 2019 and the public auction was to be held in early January 2020. Sawi only discovered this whole episode in January 2020.

Answer the following:

(a) Advise Sawi as to whether he can challenge the indefeasibility of the charge.

(15 marks)

(b) Would his position be different if the land is now registered in the name of the purchaser in the public auction?

(10 marks)

**(Total : 25 marks)**

**Continued...**

## QUESTION 4

Harri has a bungalow house erected on a piece of leasehold land. There is an express restriction in interest on the said land whereby any dealings in relation to the said land is subject to the consent of the State Authority. Harri entered into a Sale and Purchase Agreement ('SPA') with Balan to sell his bungalow house to Balan for a total purchase price of RM600,000. It was a term of the SPA that the balance purchase price of RM540,000 is to be paid by Balan to Harri within two (2) months from the date of Harri obtaining the consent to transfer from the State Authority.

Balan paid the 10% deposit sum upon execution of the SPA and applied for a housing loan from Cash Bank for the amount of the balance purchase price. Cash Bank approved the loan for RM540,000 on the security of a first party legal charge to be created in favour of Cash Bank. All the charge documents have been prepared and duly executed by Cash Bank and Balan. The original Issue Document of Title was also deposited with Cash Bank. The State Authority's consent for the transfer had also been obtained but the consent to charge has yet to be obtained, and the application is still pending approval.

Since the two (2) months period to pay the balance purchase price under the SPA was drawing close and in order to expedite matters, Cash Bank's solicitors entered a lien-holder's caveat on the leasehold land and proceeded to advise Cash Bank to release the loan sum. Cash Bank released the total loan amount to Harri. Harri had also given a letter of undertaking to Cash Bank that in the event the charge in favour of Cash Bank could not be registered for any reason whatsoever, Harri will refund to Cash Bank the entire loan sum released by Cash Bank.

Two (2) weeks after the loan amount has been released to Harri, Balan's solicitors received a letter from the State Authority stating that their application for consent to charge in relation to the said land has been rejected. Meanwhile, Balan has defaulted in his monthly payments of the housing loan and Cash Bank now intends to commence foreclosure action against Balan.

Advise Cash Bank of their legal rights and how they can recover the loan sum.

**(Total : 25 marks)**

**Continued...**

## QUESTION 5

David owns a property. He entered into a Sale and Purchase Agreement to sell his house to Mark and Mary. It was a term of the Sale and Purchase Agreement that Mark and Mary must pay the balance purchase price within three (3) months. Mark had duly lodged a caveat on the property to secure their interest. Mark and Mary were unable to make payment of the purchase price within the duration stated in the Sale and Purchase Agreement. David terminated the Sale and Purchase Agreement and applied to the Registrar to remove Mark's caveat. The Registrar then served Mark with a notice of intended removal of the caveat via Form 19C but Mark did not take any action to extend the caveat.

However, Mark has asked his wife Mary to lodge another caveat on the property based on the same Sale and Purchase Agreement. David is surprised that another caveat is lodged again on his property based on the same Sale and Purchase Agreement. He has come to see you to determine whether it is possible for him to remove the caveat lodged by Mary.

(a) Advise David.

(15 marks)

(b) Would your answer be different if Mark had withdrawn his caveat under Section 325 of the National Land Code 1965 prior to the entry of the caveat by Mary?

(5 marks)

(c) What is the situation if Mary's caveat was entered seven (7) years after the lodgement of the first caveat by Mark?

(5 marks)

**(Total : 25 marks)**

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